

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

UNITED STATES OF AMERICA

v.

PAUL W. MOUNTS,

DEFENDANT

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No. 2:99-CR-79-DBH-04

**ORDER ON MOTION FOR APPOINTMENT OF COUNSEL AND MOTION FOR
RESENTENCING PURSUANT TO 21 U.S.C. § 3582(c)(2)**

The defendant has filed a motion for appointment of counsel and to reduce sentence because the Sentencing Commission has retroactively lowered the base offense level for crack cocaine offenses. Def. Mot. to Appoint Counsel and Reduce Sentence (Docket Item 670). For the same reason that the defendant could not benefit from the earlier crack cocaine amendments, see Order of March 6, 2008, he is unable to benefit from these new reductions effective November 1, 2011. As I said in the 2008 Order:

The defendant's original Guidelines calculations were a total offense level of 38 and a Criminal History of V. The resulting Guidelines range was 360 months to life (1998 Guidelines Manual), but the statute capped the sentence at 20 years. 21 U.S.C. § 841(b)(1)(C). Accordingly, the December 28, 2000, Judgment and Commitment signed by Judge Carter imposed a sentence of 20 years. If I now lower the defendant's total offense level to 36 because of the retroactive Guideline amendment, his Guidelines range becomes 292-365 months, still in excess of the statutory cap. Thus, his sentence would still be the statutory cap of 20 years.

Order on Def.'s Mot. for Appointment of Counsel (Docket Item 581).

Moreover, the most recent Guideline amendment does not change the Base Offense Level or the Total Offense Level from what they were at the time of my 2008 Order. The 1,320 grams of crack cocaine for which Mounts was held responsible produced the same Base Offense Level of 34 in 2008 (down from 36 in 2000 when he was sentenced) and the same Total Offense Level as they do after the 2011 amendment. The Guideline range remains 292-365 months. But that range still is well in excess of the statutory cap of 20 years, and I see no reason for a departure or variance that would go below that statutory cap.

Accordingly the motion is **DENIED**.

So ORDERED.

DATED THIS 8TH DAY OF NOVEMBER, 2011

/s/D. BROCK HORNBY

D. BROCK HORNBY

UNITED STATES DISTRICT JUDGE